

# **EXHIBIT F**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

AT WHEELING

LARRY AND JANA RINE,

Plaintiffs,

CIVIL ACTION NO: 5:11-CV-4

v.

CHESAPEAKE APPALACHIA, L.L.C.,

Defendant.

AFFIDAVIT OF ERNEST FRANZ

STATE OF LOUISIANA,

PARISH OF LAFAYETTE, To-wit:

Ernest Franz, being first duly sworn, deposes and says:

1. My name is Ernest W. Franz III and I am the Vice President for Environmental Sampling, Inc ("ESI") whose headquarters is located at 335 Teljean Road, Lafayette, Louisiana 70503. A summary of my work experience is attached. I make this Affidavit upon my own personal knowledge.
2. My company, ESI, took proper care to conduct sampling of the materials in the slip and in the hillside and an initial analysis of defendant's sampling results confirms that no remediation is required at the Rine site with respect to this slip repair, however not all testing results have been received and validated, and further, some materials remain in the pit which have yet to be removed and sampled.
3. With regard to the removal and subsequent disposal of the pit material (generated drill cuttings), oilfield waste deriving from exploration, such as drill cuttings, fall under the Hazardous Waste Exemption under 40 CFR 261.4(b)(5), which satisfies the Federal guidelines. To satisfy the state disposal requirements, ESI (on behalf of Chesapeake) ran the state-required analytical laboratory test (analysis) and subsequently profiled the waste as "Drill Cuttings" and gained both state and landfill approval prior to starting the pit reclamation. See Landfill Permit attached.
4. With regard to the laboratory results that were supplied by the Plaintiffs (by their consultant Downstream Strategies, LLC), more specifically sample #5 results (collected on 3/21/2011) was collected from the bottom of an exploratory excavation in an attempt

to locate the end of the drill pit, which was made the very first day that we were out there. At the bottom of the excavation (approximately 13' to 15' deep), we hit a more solid material that was basically a dark black streak of what appeared to be a coal out cropping.

5. After examining the sample that was excavated from the black streak, it is in my opinion that the material was most probably from a thin layer of coal out cropping. I looked over the laboratory analysis that they (Downstream Strategies, LLC) supplied, more specifically sample #5, and I then compared the results with the State of West Virginia's Residential *De Minimis* Standards, and also compared it to the EPA Region III Risk Base Residential Standards. The reported Benzene level 0.14mg/kg passed both the residential and industrial standards. It is widely known that coal strata contain hydrocarbons and Benzene-ring derivatives within their organic layers (several related attached articles on coal can be supplied).

6. In conclusion, taking into consideration that Plaintiffs only produced one sample outside of the pit area that revealed anything close to remotely being a concern, coupled with the fact that that sample was most probably collected from a piece of coal and its widely known that coal outcroppings can contain elevated levels of benzene, along with other hydrocarbons and various inorganic elements, further coupled with the fact that any and all material deriving from the pit has and/or is in the process of being removed and properly disposed, I see no reason why we should stop reclaiming this pit and removing the soil when we are just a day or so away from finishing.

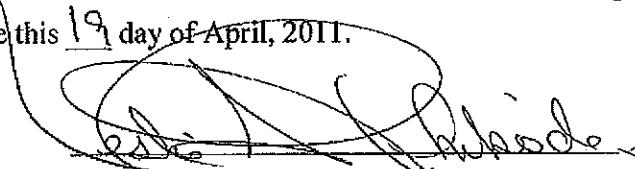
7. I feel comfortable that any and all waste associated with the pit has been properly removed and subsequently disposed and Chesapeake has followed to the letter the requirements set forth by federal and state law with respect to extracting minerals from the site.

And further Affiant sayeth naught.



Ernest Franz

Taken, sworn and subscribed before me this 19 day of April, 2011.



Notary Public within and for Lafayette  
Parish, Louisiana

My commission expires: 2012 Death

#80725

Leslie A. Thibodeaux  
Notary Public  
105 Lemond Circle  
Lafayette, LA 70507

***Environmental Sampling, Inc.***

**Qualifications**

**Ernest W. Franz, III**

Mr. Franz was born March 29, 1961 in Lafayette, Indiana. He moved to Lafayette, Louisiana in 1980 and took a position with Neuman Engineering, where he gained valuable experience building, installing and maintaining hydrocarbon detectors, mud tank level indicators and return flow indicators on various oilfield drilling rigs both on and offshore.

In 1982 Mr. Franz was employed as a service technician with Tel-Guard Services, where he continued to gain experience in hydrocarbon detection for the oilfield industry, working projects both on and offshore.

After gaining valuable work experience in the oilfield industry, particularly in hydrocarbon detection, In 1986 Mr. Franz joined James Laboratory (JALABS) as a sample and laboratory technician. It was in this same year (1986) that both Federal and State Environmental Regulations implemented stronger more stringent regulation, involving Underground Storage Tanks (USTs) and the construction, operations, maintenance and closure of oilfield waste pits (Louisiana State Wide Order 29-B), among other regulations. Since prior Federal and State regulations were far less stringent and almost non-existent up until this point, the environmental industry was in its infancy and presented many challenges for industry in trying to adhere to the new regulations. Environmental companies were also challenged in helping their clients since many of the new regulations gave very little guidance in regards to procedures, techniques and equipment needed to maintain compliance in regards to the new regulations. It was at this time that Mr. Franz became very instrumental in the design and development of several sampling apparatuses, along with the design of sampling techniques and protocols, which are still widely used today.

In the summer of 1987, Mr. Franz formed Environmental Sampling, Inc. (ESI), which currently is observed as being one of (if not the oldest) environmental company located in South Louisiana. Since that time, Mr. Franz has been recognized as an authority in the investigation, remediation and management of contaminated soil and groundwater.

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Over the past 26 years, Ernest W. Franz III, has earned certifications in Asbestos Containing Material (ACM) Assessments, Lead Base Paint (LBP) Assessments, Naturally Occuring Radioactive Material (NORM) Investigations, Mold Investigation, Oilfield Pit Investigation and Closure, UST Assessment and Remedial Actions, Hazardous Waste Spill Response , along with numerous other environmental and safety certifications. Mr. Franz's licenses and certifications include Louisiana Department of Environmental Quality (LDEQ) Response Action Contractor (RAC); LDEQ Certified Underground Storage Tank (UST) Closure Worker; Louisiana Department of Transportation and Development (LaDOTD) Certified Water Well Contractor; Louisiana State Licensing Board of Contractors, Certified for Closure of USTs and Louisiana State Licensing Board of Contractors, Certified Hazardous Waste Treatment and Removal.

Over the past 26 years, Mr. Franz has participated and attended numerous training seminars, regulatory work shops, think tanks and workshops sponsored by both governmental agencies and private industries, which include specialized investigation practices; remedial design; remediation, UST, and oilfield pit closures; asbestos, lead and mold/fungi investigation and remedial techniques; emergency response and a wide variety of different environmental media investigation and remediation training classes and seminars.

Mr. Franz has been instrumental in the design and implementation of waste management, waste tracking, and has overseen (under his direction) over six hundred waste management type projects ranging from abandoned landfill reclamation to oilfield drilling waste and for various other diverse industries. In addition, Mr. Franz has conducted hundreds of environmental property assessments for both lending institutions and private industries, along with numerous Pre-Drill and Post-Drill Site Environmental Evaluations for various oilfield companies, literally hundreds of UST Investigations and/or remedial activities. He has developed corrective action plans involving over excavation with on-site treatment, over excavation and disposal, dual phase extraction, pump and treat, ex-situ bioremediation, in-situ bioremediation, to name a few.

Through 26 years of experience, Mr. Franz has gained the respect of his peers and the regulators alike, and is recognized as a leader and expert in the environmental industry. Mr. Franz has acted as an expert witness in several court cases involving various

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environmental issues and with literally thousands of environmental projects conducted over the past 26 years, ranging from simple Environmental Pre-Drill Site Evaluations to Emergency Response efforts involving train derailment and subsequent release and remedial activities involving hazardous waste. Mr. Franz's qualifications and experience speaks for itself and meets and exceeds the definition of an *Environmental Professional*, as defined in (40 CFR part 312.10(b)).